

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SHAWN DRUMGOLD,)	
Plaintiff)	
)	
v.)	
)	04-CV-11193-NG
TIMOTHY CALLAHAN, FRANCIS)	
M. ROACHE, RICHARD WALSH and)	
THE CITY OF BOSTON,)	
Defendants)	
_____)	

**DEFENDANTS' JOINT MOTION FOR LEAVE TO SUBPOENA
AS WITNESSES MASSACHUSETTS JUSTICES BROKER AND CANAVAN**

Defendants jointly move the Court to approve separate orders for the the issuance of subpoenas to compel the appearance and testimony of the Honorable Phyllis J. Broker and the Honorable John A. Canavan, III at the trial of this matter.

As grounds therefore, the Defendants state as follows:

1. Upon information and belief, the Honorable Phyllis J. Broker is a justice of the Massachusetts Trial Court serving as First Justice of the District Court, Woburn Division.
2. Judge Broker previously worked as an assistant district attorney for Suffolk County and had assisted Assistant District Attorney Phillip Beauchesne in the preparation of the original criminal trial of the Plaintiff, Shawn Drumgold, and possesses knowledge with regard to events pertinent to the Plaintiff's cause of action.
3. Upon information and belief, the Honorable John A. Canavan, III is a justice of the Massachusetts Trial Court serving as a Justice of the Boston Municipal Court Department.

4. Judge Canavan previously worked as an assistant district attorney for Suffolk County during the period of time in which the Plaintiff was arraigned, tried and convicted for the murder of Darlene Tiffany Moore, and possesses knowledge with regard to events pertinent to the Plaintiff's cause of action.
5. Pursuant to Rule 1, "Subpoena to A Justice, Magistrate or Probation Officer", of Trial Court Rule IX, Uniform Rules on Subpoenas to Court Officials, any "subpoena to compel a justice, magistrate or probation officer of the Trial Court to testify concerning actions taken in her or his official capacity shall not be served without the prior approval of the court in which the underlying matter is pending." The rule further requires the party seeking the subpoena to obtain "the necessary order of approval by written motion which shall specify the purpose(s) for which the testimony is sought." *Id.*
6. Upon the approval of the court in which the underlying matter is pending, the party seeking the appearance and testimony of the judicial officer is required to serve the subpoena and a copy of the court order approving the subpoena on the justice, magistrate or probation officer. *Id.* "A justice...shall not be required to respond to a subpoena served on her or him unless it is accompanied by a copy of the court order approving the subpoena." *Id.*

For the foregoing reasons, Defendants request that the Court approve the proposed orders attached hereto to allow the issuance of subpoenas to compel the appearance and testimony of the Honorable Phyllis J. Broker and the Honorable John A. Canavan, III.

Respectfully submitted by:

**Defendants City of Boston and
Francis M. Roache,**
By their attorneys,

/s/ John P. Roache
John P. Roache (BBO# 421680)
Patrick J. Donnelly (BBO# 651113)
Roache & Associates, P.C.
66 Long Wharf
Boston, Massachusetts 02110
Tel.: (617) 367-0330

**Defendant,
Richard Walsh,**
By his attorney

/s/ Hugh R. Curran
Hugh R. Curran (BBO# 552623)
Bletzer & Bletzer, P.C.
300 Market Street
Brighton, Massachusetts 02135
Tel.: (617) 254-8900

**Defendant,
Timothy Callahan**
By his attorneys,

/s/ Mary Jo Harris
Mary Jo Harris (BBO# 561484)
Morgan, Brown & Joy, LLP
200 State Street, 11th Floor
Boston, Massachusetts
Tel.: (617) 523-6666

/s/ William M. White, Jr.
William M. White, Jr. (BBO# 546283)
William M. White, Jr. and Associates, LLC
One Faneuil Hall Marketplace, Thrd Floor
Boston, Massachusetts 02109
Tel.: (617) 723-7339

Date: February 8, 2008

CERTIFICATE OF SERVICE

I, John P. Roache, hereby certify that on February 8, 2008, I served a copy of the above upon counsel of record by filing with the ECF/Pacer Case Management System.

/s/ John P. Roache
John P. Roache